

HOUSE BILL REPORT

E2SHB 3024

As Passed House:

February 15, 2010

Title: An act relating to meal and rest breaks for employees of hospitals.

Brief Description: Providing uninterrupted meal and rest breaks for certain employees.

Sponsors: House Committee on Ways & Means (originally sponsored by Representatives Conway, Morrell, Van De Wege, Williams, Sullivan, Seaquist, Green, Campbell, Simpson, Wood and Nelson).

Brief History:

Committee Activity:

Commerce & Labor: 1/26/10, 1/29/10 [DPS];

Ways & Means: 2/6/10, 2/8/10 [DP2S(w/o sub CL)].

Floor Activity:

Passed House: 2/15/10, 63-34.

Brief Summary of Engrossed Second Substitute Bill

- Requires covered health care facilities to provide certain employees with uninterrupted meal and rest breaks.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Conway, Chair; Wood, Vice Chair; Crouse, Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member; Chandler.

Staff: Alison Hellberg (786-7152).

HOUSE COMMITTEE ON WAYS & MEANS

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Commerce & Labor. Signed by 14 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew and Seaquist.

Minority Report: Do not pass. Signed by 7 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Priest and Schmick.

Staff: Trista Zugel (786-7157).

Background:

Under the Industrial Welfare Act, it is unlawful for an employer to employ workers under conditions of labor that are detrimental to their health. The Department of Labor and Industries (Department) is authorized to conduct investigations into employment conditions and to adopt rules establishing employment standards.

The rules governing rest and meal periods require a meal period of at least 30 minutes. Employees are also allowed a paid rest period of at least 10 minutes for each four hours worked. By administrative policy, the Department requires that the rest period be scheduled as near as possible to the midpoint of the four hours of working time. Where the nature of the work allows, employees may also take intermittent rest periods equivalent to 10 minutes for each four hours worked.

Summary of Engrossed Second Substitute Bill:

Covered health care facilities must provide certain employees uninterrupted 30-minute meal breaks and rest breaks of at least 10 minutes for every four hours worked, or as otherwise agreed to be provided by the employer, whichever is longer. This requirement does not apply if there is:

- an unforeseeable emergent circumstance; or
- a clinical circumstance that may lead to patient harm without the specific skill or expertise of the employee on break.

An "unforeseeable emergent circumstance" is defined as any unforeseen declared national, state, or municipal emergency; when a health care facility disaster plan is activated; or any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services.

An "employee" means a person who is involved in direct patient care activities or clinical services, receives an hourly wage, and is a:

- licensed practical nurse or a registered nurse;
- surgical technologist;
- radiologic technologist;
- respiratory care practitioner;
- cardiovascular technologist or technician; or

- diagnostic medical sonographer.

Rest breaks may be taken at any point during each four-hour work period during which the employee is required to receive the rest break. Reporting a missed break is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

The health care facilities covered under these meal and rest break requirements are:

- hospitals licensed by the Department of Health;
- state hospitals that are operated and maintained by the state for the care of the mentally ill (these facilities are Western State Hospital, Eastern State Hospital, and the Child Study and Treatment Center);
- state veterans' homes (these homes are the Washington Soldiers' Home, the Washington Veterans' Home, and the Eastern Washington Veterans' Home);
- residential habilitation centers established to provide services to persons with developmental disabilities (these centers are Lakeland Village, Rainier School, Yakima Valley School, Fircrest School, Frances Haddon Morgan Children's Center, Interlake School, and facilities at Harrison Memorial Hospital);
- state or local correctional institutions with respect to facilities owned and operated by the state or by local governments that provide health care services to adult inmates; and
- facilities that provide health care in an institution for juveniles committed to the custody of the DSHS or in a county detention facility where juveniles are confined.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Commerce & Labor):

(In support) Sufficient meal and rest breaks are essential for patient safety and nurse retention issues. Nurses and other hospitals are getting very limited breaks or no breaks at all. These jobs are very demanding and the hospitals are not staffed appropriately to provide adequate breaks. This bill is a very reasonable and not too prescriptive approach. It would not disrupt hospital activities.

There were many hours of good conversation with hospitals about this issue. There is not agreement, but this bill has some important changes from bills in the past based on that dialogue. For example, under current administrative policy of the Department, a break must be taken as close to the midpoint of the four-hour period as possible. To ensure flexibility, this bill allows the rest break at any time during the four-hour period. The bill also contains an exception for unforeseen emergent circumstances, and an amendment developed to address times when an employee's particular skill or expertise is necessary.

Meal and rest breaks have been an issue in many hospitals for years. It has been addressed in collective bargaining and nurse staffing committees, but never resolved. This bill would require that employees get breaks. Collective bargaining and nurse staffing committees could address the operational aspects of breaks, not whether employees get them or not.

(Opposed) While there were positive and productive discussions over the interim, there was no resolution. This bill does not reflect those discussions. The discussions were limited to nurses, not all employees. This bill also does not include agreed upon language about when a break could be interrupted.

While it is very important for employees to have adequate meal and rest breaks, there are a couple of points of concern with this bill. First, the definition of "employee" is very broad and would expand it to everyone working at a hospital, including doctors and management. Also, the direction of when a missed break needs to be reported does not address circumstances where there is a performance issue. The emergency exception is far too narrow and the bill does not give guidance on when a meal break is triggered. The language also does not allow for patient emergencies.

This bill will be very difficult to implement. It is rigid and inappropriate for an unpredictable environment. Rural facilities in particular will be negatively affected by this bill. Breaks are very important, but patient safety should not be compromised. Staff nurses are not uniformly supportive of this bill. These issues should be dealt with in collective bargaining and nurse staffing committees.

Staff Summary of Public Testimony (Ways & Means):

(In support) This bill addresses the need for nurses to have uninterrupted meal and rest breaks that ensure they are rested enough to maintain their professional judgment. Hospitals that do not provide breaks have higher turnover and absenteeism, both of which cost hospitals money. The proponents of this bill have worked hard to ensure that it provides the flexibility that hospitals need to ensure that patient care is covered.

(Opposed) This bill will have a fiscal impact on Critical Access Hospitals. This fiscal impact would increase state costs for Medicaid. The definition of employee is too broad and covers all employees. For this reason hospitals will be required to track time to ensure that employees take their breaks. This means that these employees will become hourly employees and therefore lose their overtime exempt status. This could be an additional cost to the hospitals and the state. In the underlying statute the Department of Labor and Industries has fining authority and this could be a cost for the hospitals. Ideally breaks should be uninterrupted. Ultimately this should be addressed in collective bargaining.

Persons Testifying (Commerce & Labor): (In support) Sally Watkins and Anne Tan Piazza, Washington State Nurses Association; Eric Webster, Tacoma General Hospital; Sarah Cherin and Deb Kiesig, United Food and Commercial Workers Local 21; and Mary McNaughton and Chris Bartan, Service Employees International Union.

(Opposed) Lisa Thatcher, Washington State Hospital Association; Kristen Fox, Kadlec Medical Center; Meredith Gould, Seattle Children's Hospital; and Judy Ulrich and Cindy Peterson, Othello Community Hospital.

Persons Testifying (Ways & Means): (In support) Sophia Aragon, Washington State Nurses Association; Sharon Ness, United Food and Commercial Workers, Washington State United Council; and Chris Barton, SEIU 1199 Northwest.

(Opposed) Lisa Thatcher, Washington State Hospital Association.

Persons Signed In To Testify But Not Testifying (Commerce & Labor): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.